

Award No. 13829
Docket No. TD-15224

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The St. Louis-San Francisco Railway Company, (hereinafter referred to as "the Carrier"), violated, and continues to violate, the effective Agreement between the parties, Article 1(a), (b) and (c) thereof in particular, by its action assigning the work of compiling of certain reports to employees not within the scope of the Agreement.

(b) The Carrier be required to compensate the senior extra train dispatcher (C. E. Roberts, J. F. Moore, W. L. Horine, Bob Roach, Wm. McKnight, E. W. Wyatt) one day's pay at straight time rate of Assistant Chief Dispatcher, beginning December 1, 1963, on which day the senior extra train dispatcher was available and did not perform train dispatcher service, to continue until the work herein referred to is returned to the Chief Dispatcher's office at Springfield, Missouri.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, copy of which is on file with this Board. Said Agreement is by reference incorporated into this Submission the same as though fully set out herein. For ready reference, Article 1(a), (b) and (c) are quoted here in full:

"ARTICLE I

Scope

(a) This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher' as hereinafter used, shall include night chief, assistant chief, trick, relief and extra train dispatchers. It is agreed that one chief dispatcher in each dispatching office shall be excepted from the scope and provisions of this agreement.

Note (1): Positions of excepted chief dispatcher will be filled by employees holding seniority under this agreement.

(b) Definitions:

1. Chief, night chief and assistant chief dispatcher positions:

it has otherwise restricted itself by agreement. There is no such limitation upon this Carrier.

The instant claims have neither merit nor agreement support and should be denied. The Board is requested to find in favor of the Carrier and deny the Employees' claim in its entirety.

If the Board should reach Item (b) of the Organization's statement of claim, then it should be declared invalid for vagueness and uncertainty. The monetary amount claimed is so vague and uncertain that the Board would be required to resort to speculation and conjecture to determine the extent of the claim. The monetary claim as presented is indeterminable.

(Exhibits not reproduced.)

OPINION OF BOARD: From entries on the train sheets a clerk, working in the office of the Chief Train Dispatcher, had prepared certain reports. Then the clerk was moved to another location where she continued to prepare the reports. Dispatchers allege that Carrier violated the Agreement by moving the work from the Chief Dispatchers Office.

CONTENTIONS OF PARTIES

Dispatchers point to the sentence of the Scope Rule which lists specific duties reserved to dispatchers which concludes with the phrase "and to perform related work". (Emphasis ours.) From this Dispatchers argue that the work here involved was "related" work exclusively reserved to dispatchers; and, that Carrier so contended and was upheld in our Award No. 1593 in which Clerks was party. Also cited is our Award No. 5018 as being in accord.

Carrier contends that: (1) the right to the work is not exclusively vested in either dispatchers or clerks; (2) the phrase "related work" is general in nature; (3) to prevail Dispatchers had and failed to satisfy the burden of proving that historically and customarily the work had been performed exclusively by dispatchers; and (4) Dispatchers' statement of record that the work was "formerly compiled in the Chief Dispatchers office under his supervision and at times (Emphasis ours.) by employees within the scope of the A.T.D.A. agreement," is an admission that the work had not been exclusively performed by dispatchers. Further, Carrier asserts that Award No. 1593 does not hold that the work is reserved to dispatchers.

RESOLUTION

Award No. 1593 does not hold that the work is exclusively reserved to dispatchers. It holds that the work "is incidental to the work of trainmaster (chief dispatcher) and dispatcher." (Emphasis ours.) This means that employees covered by the Dispatchers Agreement are permitted and can be required to perform such work. It cannot be construed as giving dispatcher an exclusive right to the work.

In Award No. 5018, in which Dispatchers and The Western Pacific Railroad Companies were parties, Dispatchers unsuccessfully sought compensation for performing clerical duties "not incident or related to the duties of trick train dispatchers as such duties are defined in Rule 1-(c) of the current agreement between the parties to this dispute." Rule 1-(c) of that Agreement, as in the one before us, concludes with the phrase "and to perform related work." In denying the claim we held that the work was "related" and therefore dispatchers could be required to perform it as part of their duties.

Neither Award No. 1593 nor Award No. 5018 hold that work which is "related" to the duties of dispatchers is, *ipso facto*, work exclusively reserved to dispatchers.

Where, as in the instant case, Dispatchers claim an exclusive right to admitted "related" work, it, to prevail, must prove that the work, historically and customarily, has been exclusively performed by dispatchers. In the record before us Dispatchers have failed to satisfy the burden of proof. We will deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September, 1965.

DISSENT TO AWARD NUMBER 13829, DOCKET NUMBER TD-15224

The majority erred in adjudicating this dispute. We cannot agree with the majority that "related work" is not reserved to Train Dispatchers by definition in the Scope Rule.

The prior Awards of this Board establish the work here in question to be related work and thus contractually assured to Train Dispatchers.

In accordance with the well established "ebb and flow" principle, the work here involved should have reverted to its source, the Train Dispatchers' craft, even though clerical in nature.

For these and other reasons, dissent is hereby registered.

/s/ R. H. Hack

R. H. Hack, Labor Member